

## REMARKS

In accordance with the foregoing, the specification and claim 12 have been amended. Claims 12, 14-16, 22, and 24-38 are pending and have been allowed, with claims 12 and 22 being independent. No new matter is presented in this Amendment After Allowance Under 37 CFR 1.312(a).

### Specification and Claim Amendments and Entry of Amendment After Allowance Under 37 CFR 1.312(a)

Allowed claim 12 has been amended to change "sidewall" (one word) to "side wall" (two words) to correct an error in the Examiner's Amendment in the Notice of Allowability included in the Notice of Allowance of September 19, 2008, and to be consistent with "side wall" in claim 22 and paragraphs [0021], [0025], [0028], [0029], [0038], [0059], and [0060] of the specification. When the applicants authorized the Examiner's Amendment on September 12, 2008, they specifically pointed out that "side wall" in claim 12 should be two words.

Paragraph [0075] of the specification has been amended to change "sidewall" (one word) to "side wall" (two words) to be consistent with "side wall" in claims 12 and 22 and paragraphs [0021], [0025], [0028], [0029], [0038], [0059], and [0060] of the specification.

For at least foregoing reasons, it is submitted that entry of this Amendment After Allowance Under 37 CFR 1.312(a) is proper.

### Applicants' Statement of Substance of Interviews

The Interview Summary mailed September 15, 2008, for the personal interview conducted on September 11, 2008, between Primary Examiner Ahmed N. Sefer and the undersigned attorney, Randall S. Svihla, is acknowledged. The Examiner also gave the attorney a copy of the Interview Summary at the conclusion of the interview.

Also, the Interview Summary for the telephone interview conducted on September 12, 2008, between Examiner Sefer and attorney Svihla attached to the Notice of Allowability is acknowledged.

The applicants' statement of the substance of the substance of the interviews required by the interview summaries and MPEP 713.04 is as follows.

Personal Interview of September 11, 2008

The Examiner states as follows in the Interview Summary for the personal interview of September 11, 2008:

Applicant proposed to ammend [*sic*] claims 12 and 22 to read "spacers formed over said first insulating layer and directly contacting both sidewall portions of said gate electrode and siad [*sic*] capping layer" .

During the interview, the attorney discussed the arguments on page 9 of the Amendment of May 16, 2008, in which the applicants pointed out that Takemura et al. (Takemura) (U.S. Patent No. 5,962,897) does not disclose or suggest "spacers formed over said first insulating layer and on both sidewall portions of said gate electrode and said capping layer" as recited in independent claim 12 as alleged by the Examiner in the Office Action of January 16, 2008, because in FIGS. 5A-5D and 6A-6D of Takemura relied on by the Examiner, the spacers 22 are not formed on sidewall portions of the gate electrode 15, but are formed on sidewall portions of the capping layer 16, and in FIGS. 6A-6D of Takemura relied on by the Examiner, the spacers 22 are not formed over the first insulating layer 14, but are formed over the semiconductor layer 13.

Also, the attorney discussed the arguments on page 10 of the Amendment of May 16, 2008, in which the applicants pointed out that Takemura does not disclose or suggest "spacers formed over said first insulating layer and on side wall portions of said gate electrode and said capping layer" as recited in claim 22 as alleged by the Examiner in the Office Action of January 16, 2008, for at least the same reasons discussed above that Takemura does not disclose or suggest the similar feature of claim 12.

The Examiner stated that the applicants' arguments appeared to be based on an interpretation of "on" as meaning "directly on" or "directly contacting." However, the Examiner stated that in his opinion, "on" does not necessarily mean "directly on" or "directly contacting" because "on" is a very broad term that has many meanings in the English language, including "in the proximity of." Thus, the Examiner stated that even though the spacers 22 in FIGS. 5A-5D and 6A-6D of Takemura are not formed directly on the sidewall portions of the gate electrode 15,

they are formed in the proximity of the sidewall portions of the gate electrode 15, and thus are formed "on" the sidewall portions of the gate electrode 15. The Examiner stated that he had been advised by a TQAS (Training Quality Assurance Specialist) in Technology Center 2800 to take this broad interpretation of "on." The attorney asked to speak with the TQAS, so the Examiner took the attorney to see the TQAS, but the attorney was not able to convince the Examiner and the TQAS to change their position.

However, the Examiner stated that he was willing to allow the application if the applicants would agree to amend independent claims 12 and 22 (the only independent claims) to recite "spacers formed over said first insulating layer and directly contacting both side wall portions of said gate electrode and said capping layer." The Examiner stated that such amendments would distinguish the claims over Takemura and the other references relied on by the Examiner in the Office Action of January 16, 2008.

The attorney stated that he would forward the Examiner's proposal to the applicants for their review and approval, and would call the Examiner with an answer on Friday, September 12, 2008, if at all possible.

#### Telephone Interview of September 12, 2008

On September 12, 2008, the attorney sent the Examiner an e-mail authorizing the Examiner to enter an Examiners Amendment amending claims 12 and 22 to recite "spacers formed over said first insulating layer and directly contacting both side wall portions of said gate electrode and said capping layer" as proposed during the personal interview of September 11, 2008, to place the application in condition for allowance, and specifically pointing out that "side wall" in claim 12 should be two words. Then, the attorney left a voice mail message for the Examiner providing this same authorization.

#### Conclusion

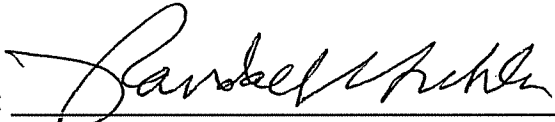
If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this paper, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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